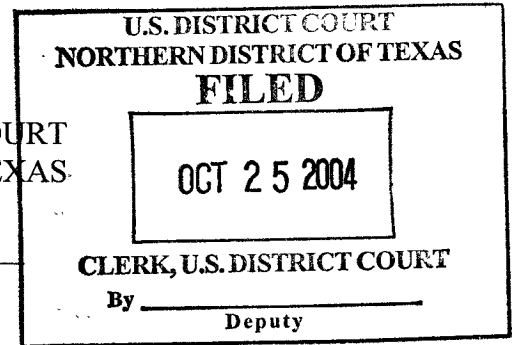


ORIGINAL

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION



ARMANDO GUERRA,
Plaintiff,

v.

MICROSOFT CORPORATION,
Defendant.

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Civil No. 3:04-CV-1167-H

MEMORANDUM OPINION AND ORDER

Before the Court is Defendant's Motion to Reconsider Order Remanding Case and Brief in Support, filed October 20, 2004.


On October 18, 2004, the Court entered a Memorandum Opinion and Order *sua sponte* remanding the case to the 193rd District Court of Dallas County, Texas, for a lack of subject matter jurisdiction. At that time, the Court had no evidence before it indicating that Plaintiff's alleged damages met the amount in controversy requirement of 28 U.S.C. § 1441.

The Court, in determining the existence of subject matter jurisdiction, must look to the Complaint at the time the notice of removal is filed. *See Brown v. Southwestern Bell Telephone Co.*, 901 F.2d 1250, 1254 (5th Cir. 1990). When the Complaint does not allege a specific amount in damages in a removed case, "[t]he test is whether it is more likely than not that the amount of the claim will exceed [the amount in controversy requirement]." *St. Paul Reins. Co. Ltd. v. Greenburg*, 134 F.3d 1250, 1253 n.13 (5th Cir. 1998). In determining whether this is the case, the amount in controversy may be determined from written discovery requests. *See Hines v. AC & S, Inc.*, 128 F.Supp.2d 1003, 1006 (N.D. Tex. 2001). In the instant case, Plaintiff admitted in Defendant's Set

of Interrogatories that “the total matter in controversy exceeds the sum or value of \$75,000.00, exclusive of interests and costs.” (Def.’s App. at 1.) The Court deems this sufficient to establish diversity jurisdiction. Accordingly, the Court vacates its Order dated October 18, 2004 and retains jurisdiction over the case. The Court, in a separate Order, reconsiders Defendant's Motion for Leave to Designate Responsible Third Parties, filed September 20, 2004.

SO ORDERED.

DATED: October 23, 2004


BAREFOOT SANDERS, SENIOR JUDGE
UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS